



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LMLTD HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC
 OPRM-DR

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application, filed on August 14, 2020, she sought an Order canceling a 1 Month Notice to End Tenancy for Cause.

In the Landlord's Application filed on September 23, 2020, the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on September 9, 2020 (the "10 Day Notice") as well as recovery of the filing fee.

The hearing of the parties' cross applications was scheduled for 9:30 a.m. on November 2, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Naming of the Landlord

Both parties incorrectly named the Landlord on their Applications for Dispute Resolution. A review of the residential tenancy agreement confirms the name of the corporate Landlord. Pursuant to section 64(3)(c) of the *Residential Tenancy Act* I amend the Applications to correctly name the corporate Landlord.

Preliminary Matter—Issues to be Decided

At the outset of the hearing the parties confirmed the Landlord did not issue a 1 Month Notice to End Tenancy in the prescribed form as required by sections 47 and 52 of the Act. The Tenant provided a copy of a “Breach Letter” in support of her claim, which she confirmed was the reason she applied for Dispute Resolution.

As the Tenant did not receive a 1 Month Notice, her request to cancel such a Notice is not applicable. I therefore dismiss her claim for an Order canceling a 1 Month Notice.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?
2. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent?
3. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence before me and which indicated the following: this one-year fixed term tenancy began May 8, 2020; monthly rent was \$1,400.00; and, the Tenant paid a \$700.00 security deposit and \$700.00 pet damage deposit.

The Tenant failed to pay her September 2020 rent, following which the Landlord served the 10 Day Notice. The Landlord’s Building Manager, V.G., testified that the Notice was served on the Tenant by posting to the rental unit door on September 9, 2020.

V.G. confirmed that the Tenant did not pay the outstanding rent, nor did she apply to dispute the 10 Day Notice.

The Tenant testified that the Landlord’s employee personally served her with the 10 Day Notice a “couple days” after September 9, 2020. She confirmed she did not pay the September or October rent. She stated that she lost her job and was unable to pay. The Tenant also stated that she did not pay her September and October rent as the Landlord’s agents were “harassing” her by posting breach letters on her door. The Tenant also claimed that she had the cash available to pay those months, but had not paid her November rent and was awaiting a cheque.

Analysis

The Landlord issued the Notice pursuant to section 46 of the *Act*; the relevant portions of that section provide as follows:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date

On the basis of the Tenant's testimony, I find that the Notice was personally served on the Tenant on September 11, 2020. As such, the Tenants had five days in which to pay the outstanding rent, or apply for dispute resolution. In this case the Tenant failed to pay the rent and failed to apply for dispute resolution by September 16, 2020 as required by section 46(4). Consequently, and by operation of section 46(5), the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit.

When asked to explain why she did not pay her September rent, the Tenant stated that she felt harassed by the Landlord's agents as they put "breach letters" on her door. The Tenant also stated that she was without work and did not have the funds to pay the rent at the time the Notice was issued.

As discussed during the hearing the Tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy

agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As noted during the hearing, there are only four occasions, permitted under the *Residential Tenancy Act*, where a tenant has the legal right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*.

Many landlords and tenants have lost their jobs, or experienced reduced earnings, as a result of the COVID-19 pandemic. However, this does not absolve them from their legal obligations pursuant to the *Residential Tenancy Act*. As noted above, section 26 requires that a Tenant must pay rent unless they can prove they had a legal right pursuant to one of the four expectations enumerated above. Withholding rent because a Tenant is upset about the Landlord's agent's behaviour, or because the Tenant has lost their job, does not meet the narrow circumstances provided above. In the case before me I find the Tenant had no legal authority to withhold rent.

Accordingly, I grant the Landlord's request for an Order of Possession pursuant to section 55 of the *Act*. The Order must be served on the Tenants and may be filed and enforced in the B.C. Supreme Court.

I also find the Landlord has met the burden of proving their claim for monetary compensation. The undisputed evidence before me is that the Tenant failed to pay her September, October and November rent; as such, the sum of \$4,200.00 remains outstanding. I find the Landlord is entitled to monetary compensation from the Tenant for this unpaid rent. As the Landlord has been successful in this Application, I also award them recovery of the \$100.00 filing fee for a total award of \$4,300.00.

Conclusion

The Tenant's request to cancel a 1 Month Notice to End Tenancy for Cause is dismissed.

The Landlord's request for an Order of Possession and monetary compensation based on the 10 Day Notice is granted. The Order of Possession shall be effective two days after service on the Tenant.

The Landlord's request to recover the filing fee is granted.

I authorize the Landlord to retain the Tenant's \$700.00 security deposit and \$700.00 pet damage deposit towards the \$4,300.00 awarded and I grant the Landlord a Monetary Order for the **\$2,900.00** balance due. The Landlord must serve the Monetary Order on the Tenant and may file and enforce the Order in the B.C. Provincial Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 03, 2020

Residential Tenancy Branch